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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,101	07/25/2001	Arthur S. Harkin	10006843-1	8431

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EXAMINER

SWEARINGEN, JEFFREY R

ART UNIT	PAPER NUMBER
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2145

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/916,101

**Applicant(s)**

HARKIN ET AL.

**Examiner**

Jeffrey R. Swearingen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>26 July 2001</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. Applicant incorrectly cited Patent No. 6,006,269 as Patent No. 6,000269 on the information disclosure statement. The document has been considered, and Examiner has listed the correct citation on the PTO-892 form.

### ***Drawings***

2. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because three pages of drawings were submitted and a fourth page referred to in the drawings was not submitted. As communicated on 4 September 2001, Applicant was notified that only three pages of drawings were submitted. Since Applicant accepted the application as submitted, all references to the fourth page of drawings must be removed. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: Figure 3, items R3 and S8. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "25" has been used to designate both encrypt/decrypt function and client request processor in the specification. See page 10, lines 9 and 26. The drawings are objected to as failing to comply with 37

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CFR 1.84(p)(4) because reference character "27" has been used to designate both client-request processor and deferral manager in the specification. See page 10, line 16 and page 12, line 7. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Specification***

5. A substitute specification excluding the claims is required pursuant to 37 CFR 1.125(a) because of numerous errors.
6. All references to Figure 4 must be removed since Applicant accepted the application as submitted. Additionally, there are numerous errors within the specification concerning references to items 25 and 27 in Figure 1. Examples can be seen within paragraphs 0034 and 0035, but errors concerning items 25 and 27 are not limited to the two aforementioned paragraphs.
7. A substitute specification must not contain new matter. The substitute specification must be submitted with markings showing all the changes relative to the immediate prior version of the specification of record. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. An accompanying clean version (without markings) and a statement that the substitute specification contains no new matter must also be supplied. Numbering the paragraphs of the specification of record is not considered a change that must be shown.

#### ***Claim Rejections - 35 USC § 102***

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8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. **Claims 1-4, 8-9, 11-12** rejected under 35 U.S.C. 102(b) as being anticipated by Phaal (U.S. Patent No. 6,055,564).

10. Regarding **claim 1**, Phaal discloses *an application tier that generates resource utilization data; and a client-response tier that performs admission control using said resource utilization data* [Phaal discloses a resource monitor, an admission control gateway, and processing servers. Because the resource monitor and admission control gateway operate independently of each other, Examiner considers them to be in different tiers. See Phaal, Figure 2. See Phaal, column 5, lines 60-62. See Phaal, column 6, lines 13-15.]. By this rationale **claim 1** is rejected.

11. Regarding **claim 2**, Phaal discloses *a client-response tier ha[ving] an admissions control gateway for receiving client requests from client computers* [See Phaal, Figure 2, item 125.]; *a deferral manager for making determinations concerning which of said client requests should be admitted for processing at least in part as a function of application-resource-utilization data* [See Phaal, Figure 2, item 131.]; *a client-request processor for processing, said client-request processor generating application requests in response to at least some of said client requests, said client-request processor generating client*

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*responses received in response to said application requests [See Phaal, Figure 2, item 117.]; and said application tier ha[ving] at least one application-tier server not in said client-response tier, an application processing function running on said server for responding to said application requests with said application responses [Phaal discloses a scheduler, which would respond to requests from the deferral manager with responses. See Phaal, Figure 2, item 135.], and a resource monitor for generating said application-resource-utilization data by monitoring utilization parameters on said server, said resource monitor communicating said resource-utilization to said deferral manager [Phaal's resource monitor does not communicate directly with the deferral manager. However, Phaal's resource monitor does use the information from the resource manager to decide whether to admit the request in the admission control gateway, as per the preferred embodiment of the invention. This performs equivalent functionality to the deferral manager receiving information from the resource monitor, per the specification. See Phaal, column 6, lines 24-49.]. By this rationale **claim 2** is rejected.*

12. Regarding **claim 3**, Phaal discloses the use of the invention in a web environment. See Phaal, column 7, lines 16-65. Phaal gives examples of the messages passed in the web environment, including HTTP. See Phaal, column 1, lines 18-27. By this rationale **claim 3** is rejected.

13. Regarding **claim 4**, Phaal discloses a *client-response tier includ[ing] at least one client-response-tier server on which said deferral manager and said client-request processor run, said client-response-tier also having a client-response-tier resource monitor for generating client-response-tier resource utilization data as a function of parameters associated with said client-response-tier server, said client-response-tier resource monitor providing said client-response-tier resource utilization data to said deferral manager, said deferral manager making said determinations in part as a function of said client-response-tier resource utilization data.* [Phaal discloses a preferred host processing system with a deferral manager and a resource monitor. See Phaal, column 5, lines 40-44. See Phaal, column 6, lines 13-65. Phaal's resource monitor does not communicated directly with the deferral manager. However, Phaal's resource monitor does use the information from the resource manager to decide whether to admit the request in the admission control gateway, as per the preferred embodiment of the invention. This performs equivalent functionality to the deferral manager receiving information from the resource monitor, per the

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specification. See Phaal, column 6, lines 24-49. Phaal states that one or more servers are present in the host system. See Phaal, column 5, lines 43-45. Phaal does not limit where the resource monitor and deferral manager can be located in the system, so the resource monitor and deferral manager can be located on a server.] By this rationale **claim 4** is rejected.

14. Regarding **claim 8**, the limitations of this claim are substantially the same as those in claim 2. Therefore the same rationale for rejecting claim 2 is used to reject claim 8. By this rationale **claim 8** is rejected.

15. Regarding **claim 9**, Phaal discloses *in the event a determination is made to defer admission of said client request, a notification is sent to said client to that effect via said network* [Phaal generates a web page sent to client's browser, informing the client that the request is deferred. See Phaal, column 7, lines 27-36.]. By this rationale **claim 9** is rejected.

16. Regarding **claim 11**, the limitations of this claim are substantially the same as those in claim 4. Therefore the same rationale for rejecting claim 4 is used to reject claim 11. By this rationale **claim 11** is rejected.

17. Regarding **claim 12**, the limitations of this claim are substantially the same as those in claim 1. Therefore the same rationale for rejecting claim 1 is used to reject claim 12. By this rationale **claim 12** is rejected.

### ***Claim Rejections - 35 USC § 103***

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. **Claims 5-7, 10** rejected under 35 U.S.C. 103(a) as being unpatentable over Phaal and Bixby et al. (U.S. Patent No. 5,317,568).

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20. Pertaining to **claim 5**, Phaal is applied as in claim 4. Phaal fails to disclose expanding the processing capacity on the client-response tier.

21. However, Bixby discloses expanding the processing capacity. [Bixby discloses the use of load distribution among information processors. Each record can be adjusted to reconfigure the distribution of processing load among processors. See Bixby, column 4, lines 17-46].

22. It would have been obvious to one of ordinary skill in the networking art at the time of the invention to combine Phaal and Bixby for the purpose of resource management [See Bixby, column 2, lines 55-57]. Phaal gives motivation for the combination by stating that as long as processing resources are available messages are processed. [See Phaal, column 1, lines 61-65]. By this rationale **claim 5** is rejected.

23. Pertaining to **claim 6**, Phaal is applied as in claim 2. Phaal fails to disclose expanding the processing capacity on the application tier.

24. However, Bixby discloses expanding the processing capacity. [Bixby discloses the use of load distribution among information processors. Each record can be adjusted to reconfigure the distribution of processing load among processors. See Bixby, column 4, lines 17-46]. By this rationale **claim 6** is rejected.

25. Pertaining to **claim 7**, Phaal and Bixby are applied as in claim 6. Bixby also discloses increasing the number of processors to increase processing capacity. [Examiner considers reconfiguring the distribution of processing load among processors to allow increasing the number of processors. See Bixby, column 4, lines 17-46]. By this rationale **claim 7** is rejected.

26. Pertaining to **claim 10**, the limitations of this claim are substantially the same as those in claim 6. Therefore the rationale used to reject claim 6 is used to reject claim 10. By this rationale **claim 10** is rejected.

### ***Conclusion***

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,105, 067      Batra, Virinder Mohan.



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Bhatti, N. and R. Friedrich. "Web Server Support for Tiered Services." IEEE Network. Volume 13, No. 5. Sept. – Oct. 1999. Pages 64-71.

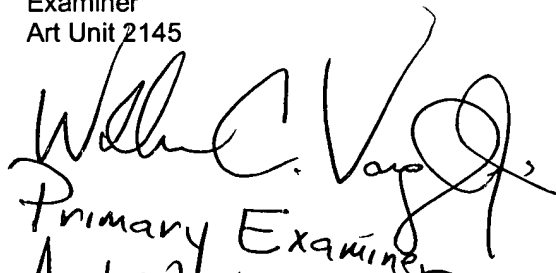
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571) 272-3921. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JRS

Jeffrey R. Swearingen  
Examiner  
Art Unit 2145

  
Primary Examiner  
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William C. Vaughn, Jr.